

Steps & Resources for Assuming Clean Water Act Section 404 Program

Basic Steps:

Step 1 - **Initiate** - Contact applicable EPA Regional Administrator and US Army Corps District/Division to identify interest in assumption

Step 2 – **Hold Pre-Application Dialogue** - Confer with EPA regional and headquarters staff on pre-application steps, process, and substantive requirements; review existing state programs, laws, and resources and identify program modifications and/or legislation needs; conduct outreach with the public and regulated community; obtain feedback from US Army Corps of Engineers on waters to be retained by the federal government

Step 3 – **Develop and Submit Application** – Submit letter from Governor with Attorney General statement on legal sufficiency of proposed state permit program; describe equivalent state program; draft memorandums of agreement with applicable EPA Regional Administrator and Secretary of the Army

Step 4 – **EPA Review and Approval** – EPA reviews application; publishes a notice of the application for public comment; conducts federal agency review; holds a public hearing; and documents its review and decision by the EPA Regional Administrator

Resources:

State/Tribal Assumption Regulations (40 CFR 233) - regulations specifying procedures and criteria used by the EPA in considering assumption of section 404 program
(https://www.epa.gov/sites/production/files/2015-03/documents/2004_10_21_wetlands_40cfrpart233.pdf)

Section 404(b)(1) Guidelines (40 CFR 230) – regulations that constitute substantive environmental criteria used in evaluating activities regulated under Section 404 of the Clean Water Act (<https://www.epa.gov/cwa-404/section-404b1-guidelines-40-cfr-230>)

Report by Assumable Waters Subcommittee – Advisory group convened under National Advisory Council for Environmental Policy and Technology committee to provide advice and recommendations on how the EPA could clarify the waters for which a state or tribe could assume permitting responsibility under an approved Clean Water Act section 404 program
(https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprot_05-2017_tag508_05312017_508.pdf)

Memo from US Department of Army, Office of Assistant Secretary (Civil Works). July 30, 2018. Subj: Clean Water Act Section 404(g) – Non-Assumable Waters – guidance to US Army Corps of Engineers that clarifies waters assumable by a state or tribe
(<https://www.army.mil/e2/c/downloads/525981.pdf>)

ASWM and ECOS 2011 Handbook – guidance for states and tribes on assuming the 404 program (https://www.aswm.org/pdf_lib/cwa_section_404_program_assumption.pdf)